the prosecution that it was not safe to convict. These, however, are all questions of fact and an appellate Court rarely interferes with the findings of the Magistrate who heard the witnesses. The learned Magistrate accepted Mun Chiok Hai as a witness of truth, and unless there is some principle of law which should have prevented the acceptance of his evidence without corroboration, the accused was clearly guilty of the offence charged.

It is true that the witness made certain statements to one Choy Ah Kiew, a maidservant in the house, which confirm his evidence in various important particulars, although not as to the identity of the accused. Under section 157 of the Evidence Ordinance such statements are treated as corroboration of a witness (see *Rex v. Koh Soon Poh,*[1] but such corroborative evidence standing by itself is not usually regarded as sufficient corroboration of an accomplice within the meaning of section 115 illustration (b) of the Evidence Ordinance. For the purpose of this appeal the evidence of Mun Chiok Hai must be regarded as uncorroborated.

Although there is not in Malaya as in England any statutory provision that the unsworn evidence of a child of tender years must be corroborated by some other material evidence implicating the accused, I accept the ruling of the Johore Court of Appeal (Sir Walter Huggard, C.J., S.S. and Gerathy, J.) in *Lee Mion v. P. P. of Johore,*[2] that the principle of requiring corroboration in the case of an accomplice is equally applicable where the conviction depends on the unsworn evidence of a child. Now under section 134 of the Evidence Ordinance an accomplice is a competent witness, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. It is, however, an established rule of practice that in trials before a jury or assessors the danger of accepting such evidence must be clearly put by the trial Judge. The same principles should be applied in accepting the evidence of a child of tender years.

In a trial before a Magistrate it often happens that there is nothing in the record to show that in considering the evidence the Magistrate has directed himself to the rules of evidence with which he can be presumed to be familiar. In the Johore case the Court ruled that it could not be assumed that the trial Judge (sitting without assessors) had directed his mind to the danger of accepting the uncorroborated testimony of a child witness when there was nothing in the record to indicate that he had done so.

I think it is obvious that this principle may easily be carried too far. It might be argued, for instance, that because there was nothing in the record to show that the Magistrate appreciated that the burden of establishing their case was on the prosecution, he might have misdirected himself on this point, or that, in the case of a prosecution under section 304 (A) of the Penal Code, he did not appreciate that a high degree of negligence must be established. If that were the law no conviction would stand, and for the future every judgment would have to be prefaced by a statement that the Magistrate was familiar with the law and the rules of evidence applicable to the case, and had carefully considered them in arriving at his decision. I find myself, therefore, unable to agree with the ruling of Aitken, J. in *White v. P. P. of Kedah,*[3] where he held that the conviction under section 304A of the Penal Code must be set aside because the Magistrate had not specifically stated that the principle that a high degree of negligence was necessary to justify a conviction was present in his mind.

So far as concerns the question of corroboration I think that any indication on the record that the point had been raised should be sufficient to satisfy an appellate Court that the Magistrate fully appreciated that corroboration was normally required. There is a suggestion in the judgment of Gerahty, J. in the Johore case that any such indication in the address of counsel might be sufficient. As I find that the Johore case was cited by learned counsel in the Court below at the close of the prosecution case, I feel no doubt that the point was present in the learned Magistrate's mind, even though it is not specifically referred to in his grounds of judgment.

I find, therefore, that this ground of appeal also fails. The appeal will therefore be dismissed.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

September 5, 1940.

MAHMOOD BIN MOHAMED SHAFI v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 77 of 1940]

Corroboration of witness of tender years by witness of tender years.

Just as by rule of law one accomplice cannot corroborate another so one witness of tender years cannot corroborate another witness of tender years. A magistrate fully cognisant of the danger of accepting uncorroborated evidence may nevertheless do so but he must deliberately accept the evidence of the witness without corroboration and must direct his mind to the danger of doing so.

Case referred to:—

(1) *Lee Mion v. P. P. of Johore,* 3 M.L.J. p. 124.

APPEAL.

C. H. da Silva for the appellant.

C. H. Koh (D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Terrell, Ag. C.J.—In a judgment which I delivered in a recent Magistrate's Appeal No. 75 of 1940 (*Fuan Ah Pock vs. Rex*) I ruled that the principle of requiring corroboration in the case of accomplices was equally applicable where the conviction depends on the unsworn evidence of a child, and followed the ruling of the Johore Court of Appeal in the case of *Lee Mion vs. the P. P. of Johore*[1]. It follows from this that just as by rule of law one accomplice cannot corroborate another, so one witness of tender years cannot corroborate another witness of tender years.

It was, of course, open to the Magistrate, while fully cognisant of the danger of accepting uncorroborated evidence, nevertheless to do so. In the present case, however, the learned Magistrate, though warned by the argument of counsel that corroboration was necessary, states in his grounds of judgment that one child witness corroborated the other. This negatives an inference that might otherwise have been drawn that he accepted the evidence of either witness without corroboration.

The learned Magistrate, therefore, clearly misdirected himself. The appeal must, therefore, be allowed, the conviction quashed and the sentences set aside.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
BARRETT-LENNARD, J.
October 4, 1924.

K.M. NATHERSAHIB & ANOTHER
v.
MEYER BROTHERS.

[SINGAPORE SUIT No. 908 of 1923]

Act both crime and tort—Criminal prosecution before civil action.

When an act is both a crime and a civil wrong, prosecution for the criminal offence is generally a condition precedent to a civil action in tort at any rate in the case of a non-compoundable offence.

TRIAL OF ACTION.

H. B. Layton and C. H. Smith for plaintiffs.

R. L. L. Braddell and John Laycock for defendants.

In this case the plaintiffs claimed (a) a declaration that 34 promissory notes dated on or about the 12th of July 1923 and made by the two plaintiffs in favour of the defendants were founded on an illegal consideration and were therefore not binding upon the plaintiffs; (b) an order for the delivery up of the notes; and (c) an injunction restraining the defendants from negotiating such notes. The defendants counter-claimed the sum of $148,912.99 being the balance due to the defendants on the plaintiffs' account with them.

There had been considerable dealings between the plaintiffs and the defendants as a result of which the plaintiffs were liable to the defendant in a very large sum of money. The defendants however considered that the matter was beyond a mere civil liability and that the first plaintiff had committed a criminal offence and at the instance of the defendants the first plaintiff was on the 8th June 1923 arrested and charged with the offence of cheating, an offence which is not compoundable. The plaintiffs alleged that the defendants had agreed to compound the prosecution in consideration of the plaintiffs executing 35 promissory notes for the amount of the plaintiffs' liability to the defendants. In fact the plaintiffs did execute such promissory notes and subsequently the prosecution of the first plaintiff was withdrawn and he was discharged. There was considerable difference between the evidence for the plaintiffs and for the defendants on the question of the ground of the withdrawal of the prosecution. In any case the prosecution was withdrawn with the assent of the Deputy Public Prosecutor. The judgment is only of interest on the question that if a wrongful act is both a crime and a tort the crime should be investigated before the Court deals with the question of civil liability in tort. On that subject the judgment of the learned Judge proceeds as follows:—

Barrett-Lennard, J.—Judgment will be entered for the defendants in the sum of $148,912.99 and the costs of this counter-claim. I deplore that it has fallen to me to hear these proceedings antecedently to the prosecution of the plaintiff. It is a wise rule of public policy that a jury shall pass a verdict at the Assizes before a Judge sitting alone tries the issue of criminality. It may be that, if not confronted with the authority signed by the Deputy Public Prosecutor to withdraw from the prosecution of the plaintiff, I should have insisted that his guilt or innocence be investigated by that tribunal in which Englishmen have confidence when issues of criminality are raised. But justice would not, in the circumstances, have been advanced had I adopted that course.

Judgment for defendants.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.